In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 369

MUSA HAMADEH, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a–5a) is reported at 343 F. 2d 530.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 1965. A petition for rehearing was denied on April 23, 1965. The petition for a writ of certiorari was filed on July 19, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Special Inquiry Officer conducted a fair and impartial hearing, and based his decision on reasonable, substantial, and probative evidence.

2. Whether the admission of a statement made by petitioner to an officer of the Immigration and Naturalization Service violated the principles of this Court's decision in *Escobedo* v. *Illinois*, 378 U.S. 478.

STATEMENT

After an adverse decision of the Board of Immigration Appeals (Pet. App. 5a–13a), petitioner sought review in the Court of Appeals for the Seventh Circuit of an order of deportation to Jordan and denial of voluntary departure (Pet. App. 14a–22a). The court of appeals affirmed the order (343 F. 2d at 533).

The evidence taken at the hearing before the Special Inquiry Officer may be summarized as follows:

Petitioner, a native and citizen of Jordan, first came to the United States as a student in 1955 (R. 40–41).[1] In 1957, while he was still a student at Roosevelt University in Chicago, petitioner asked a friend, Samuel Wiggins, to help him meet an American girl whom he could marry for the purpose of remaining in this country (R. 117). Petitioner told Wiggins that he would not live with his wife after the marriage and would get a divorce about a year later (R. 117–118). Petitioner also made the same request of Wiggins' sister-in-law, Stella Hall (R. 91–92). She introduced petitioner to a Mrs. Geraldine Vincent, nee Armstead, a divorcee seven years older than petitioner, the mother of an eleven year old daughter, and an Amer-

[1] Reference is to that volume of the Certified Administrative Record, filed with this Court, which contains the pertinent Immigration and Naturalization Service orders and the transcript of petitioner's hearing before the Special Inquiry Officer.

ican citizen (R. 63, 66, 76, 84). From the outset, Mrs. Vincent understood that the purpose of the proposed marriage was solely to allow petitioner to stay in this country (R. 67–68, 81), although petitioner testified to the contrary at the hearing, asserting that he had intended to live with Mrs. Vincent after the marriage and establish a home (R. 47–54). At the same time the marriage was proposed, petitioner discussed the divorce to be obtained a year later, and agreed to pay for it (R. 69, 81–82). On June 20, 1957, petitioner married Mrs. Vincent (R. 49, 63), but they never lived together and rarely saw each other (R. 69, 80, 94), as petitioner acknowledged when he was cross-examined about a statement that he had given to an immigration officer on August 16, 1961, in which he falsely asserted that he had lived with Mrs. Vincent for a full year (R. 50–51; Ex. 4). After the marriage, petitioner went to Canada, then re-entered the United States on November 8, 1957, under a nonquota visa for permanent residence, issued to him on the basis of his marriage in response to a petition filed in his behalf by Mrs. Vincent as his American wife (R. 54; Ex. 3). Prior to his re-entry into the United States, petitioner had named Mrs. Vincent as the beneficiary of his group life insurance policy effective October 28, 1957, although Mrs. Vincent knew nothing about the policy (Ex. 7). Except for the visa petition that she filed in petitioner's behalf, Mrs. Vincent did not use petitioner's name as her own until institution of divorce proceedings (R. 80).

In the spring of 1958 petitioner called Mrs. Vincent and asked her to institute suit for divorce, which she did (R. 70; Ex. 5). Although petitioner testified that Mrs. Vincent sought the divorce independently, for reasons unknown to him, he admitted that he paid for the suit and did not contest it (R. 47, 54). Mrs. Vincent and Stella Hall gave false testimony in an Illinois court in support of the false allegations in the divorce complaint (R. 77–79, 96, 98; Ex. 5),[2] and a divorce was granted on June 28, 1958 (R. 42–43, Ex. 6). Petitioner went back to Jordan, departing from the United States on June 3, 1962, and there married a citizen of Jordan on July 21, 1962. Petitioner's second wife remained in Jordan when he returned to the United States on August 30, 1962 (R. 58–59).

ARGUMENT

1. The hearing conducted by the Special Inquiry Officer was fair and impartial, and his decision was based on reasonable, substantial, and probative evidence. Petitioner was given reasonable notice of the hearing (Ex. 1), he was represented by counsel throughout the hearing (R. 37, 46, 62, 102–103), he was given an adequate opportunity to testify and present other evidence in his own behalf (R. 47–59; Ex. 7), and he was allowed to cross-examine the government's witnesses. The strict common law rules

[2] Both women testified that petitioner had communicated with them in an attempt to shape the testimony they would give at the hearing before the Special Inquiry Officer (R. 72–74, 94–95), and Mrs. Vincent testified that he had asked her to testify falsely (R. 72–74).

of evidence do not apply in administrative hearings, and the admission even of incompetent and irrelevant matter is not reversible error where, as here, there is substantial evidence to sustain the decision of the agency. *Yiannopoulos* v. *Robinson,* 247 F. 2d 655 (C.A. 7); *Navarrette-Navarrette* v. *Landon,* 223 F. 2d 234 (C.A. 9), certiorari denied, 351 U.S. 911. The government went far beyond merely establishing a *prima facie* case, and presented substantial evidence to show that petitioner's marriage to Mrs. Vincent was merely a front, conceived and entered into for the sole purpose of evading the immigration laws (see Statement, *supra*). Petitioner offered only his own improbable denials and his group insurance policy under which Mrs. Vincent was a beneficiary. Under the circumstances, the hearing officer's findings were fully warranted. And, in view of petitioner's attempts to evade the immigration laws and induce false testimony by others, it was well within the hearing officer's discretion to deny petitioner the privilege of voluntary departure in lieu of deportation.

2. In his petition for a writ of certiorari, petitioner for the first time argues that this Court's holding in *Escobedo* v. *Illinois,* 378 U.S. 478, regarding right to counsel in police interrogations, is applicable in the instant case with respect to petitioner's statement (Ex. 4) taken by an officer of the Immigration and Naturalization Service (Pet. 2, 5–6). However, no objection to the statement was made on that basis at the hearing. Petitioner contended only that the statement had not been made voluntarily and that it was

not a verbatim copy of the responses he had made to the immigration officer's questions (R. 41).[2] In all events, *Escobedo* is inapplicable to the facts of this case. This is not a criminal case. The statement, taken more than a year before deportation proceedings were instituted, was in the investigatory, not the accusatory, stage of the proceeding (see 378 U.S. at 492); there was no purpose to elicit a confession. The statement was exculpatory and formed no part of the government's case on the merits; it was used only to impeach petitioner's credibility. Petitioner was not in custody when he made the statement and had not requested and been denied an opportunity to consult with counsel (see 378 U.S. at 490–491). And exclusion of the statement would not have affected the outcome of the case in view of the substantial evidence against petitioner.

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[2] The statement itself shows, and the immigration officer who took it testified, that petitioner was told of his right to remain silent and that any statement he made could be used against him in any criminal or civil proceeding (R. 122–128; Ex. 4). Petitioner's own testimony completely failed to establish that the statement was made involuntarily (R. 41–42), and in the petition for certiorari, his claim that the statement should have been excluded on that ground has been abandoned. His claim that the statement was not an accurate record of his answers is refuted by the testimony of the officer who questioned him (R. 124, 128).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1965.

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